

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
:
JOHN DAVID WHITFIELD, :
:
Plaintiff, : 20-CV-4674 (JMF)
:
-v- : ORDER
:
CITY OF NEW YORK et al., :
:
Defendants. :
:
----- X

JESSE M. FURMAN, United States District Judge:

On March 15, 2024, the U.S. Court of Appeals for the Second Circuit vacated this Court's April 29, 2021 dismissal of Plaintiff's claims on res judicata grounds and remanded the matter for further proceedings. *See* ECF No. 63, at 45. The Second Circuit noted that "[o]n remand, Defendants may be permitted to move to dismiss again based on the alternative grounds first raised in their December 2020 motion and as yet not addressed by either" this Court or the Second Circuit. *Id.*

On April 8, 2024, this Court ordered each side to file a letter proposing next steps in light of the Second Circuit's decision. *See* ECF No. 66. In letters filed pursuant to that Order, Defendants request that the Court set a briefing schedule for a renewed motion to dismiss, *see* ECF No. 68, and Plaintiff seeks leave to file "a motion for partial summary judgment regarding several issues that there is no genuine dispute as to any material fact," ECF No. 67. Plaintiff's request to file a motion for partial summary judgment is hereby DENIED without prejudice to renewal if Defendants' renewed motion to dismiss is denied in any part.

Accordingly, it is hereby ORDERED that Defendants shall file a renewed motion to dismiss no later than **May 13, 2024**. Plaintiff shall file any opposition by **June 3, 2024**, and Defendants shall file any reply by **June 10, 2024**.

Alternatively, Plaintiff may choose to respond to Defendants' renewed motion to dismiss by filing an amended complaint by **June 3, 2024**. If Plaintiff believes that the pleading of additional facts will cure deficiencies identified in the motion to dismiss, Plaintiff should include those facts in the amended complaint. Plaintiff will not be given any further opportunity to amend the complaint to address issues raised by the motion to dismiss.

If Plaintiff does amend, by three (3) weeks after the amended complaint is filed, Defendants shall: (1) file an answer; (2) file a new motion to dismiss; or (3) file a letter on ECF stating that they rely on the previously filed motion to dismiss. If Defendants file an answer or a new motion to dismiss, the Court will deny the previously filed motion to dismiss as moot. If Defendants file a new motion to dismiss or indicate that they rely on their previously filed

motion to dismiss, any opposition shall be filed within fourteen days, and any reply shall be filed within seven days of any opposition.

SO ORDERED.

Dated: April 22, 2024
New York, New York



JESSE M. FURMAN
United States District Judge